IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL Writ Petition No.139 of 2006

Anthony C Fernandes .. Petitioner.
vs
Mun Corporation of Mumbai & Ors. ..Respondents

Mr J .P. Sen with Noshir Engineer i/b PMG Law for petitioner.

Ms Priti Purandare for respondent Nos. 1 and 5

Mr. Uttangale for respondent No.2

Mr. Mattos AGP for respondent Nos. 3 and 4

Mr. P.G. Karande for respondent Nos. 6,8 and 12.

CORAM: H.L.GOKHALE, Acg C.J.,&
V.M. KANADE J.
DATE: February 7, 2007.

P.C.:-

Heard Mr. Sen for the petitioner, Ms Purandhare for respondent Nos.1 and 5, Mr. Uttangale for respondent No.2, Mattos, AGP for respondent Nos. 3 and 4 and Mr. Karande for respondent Nos. 6,8, and 12.

This petition is filed by a senior citizen stating in Vile Parle West area. He is seeking an injunction restraining the respondents from proceeding with the construction in certain area wherein a gaothan road is going to be blocked i.e. prayer

clause (a) of the petition. The petition prays that the permission for redevelopment of the concerned property be revoked. Reliance is placed on various maps in support. Affidavits in reply have been filed by the City Survey Officer one Mr.Panditrao Revanji Gavit affirmed on 17th January, 2007 as also of one Mr. Suresh Gupta, director of respondent No.12, which is a company entrusted with the development work on part of the said property. It is pointed out by these affidavits that the concerned plot of land was initially bearing S.No.269/2 and subsequently when City Survey Numbers were given, the numbers changed to CTS Nos 793 parts (1) to (13). It is seen that orders passed by various authorities from time to time are annexed to this affidavit and amongst others an order passed way back on 31st January 1973 on an application of one R.P.E. Vazifdar is annexed. It is an order passed by the City Survey Officer which records that the entire plot of land No.269/2 is owned by Mr. Vazifdar. It also records that S.No. 269/2 includes CTS No. 793 Parts (1) and (12) . It also records that part of this property covers a road. Our attention is also drawn to the property card which shows that the concerned road is a gaothan road. This being the position respondents submit that the property is a private property and since on part of the property there were slums, a scheme for rehabilitation has

been drawn and only in the course of that development the portion which was covering the gaothan road and which is a private road is being covered under this development.

Mr. Sen learned counsel for the petitioner submits that this is a public street and, therefore, cannot be permitted to be blocked. As against this submission of the petitioner, it is submitted by Mr. Mattos appearing for the Government that as per the Government record it is clearly a gaothan road. He also stated that it is part of the private property and that being so it is submitted that the party successor to the original owner cannot be prevented from developing the property.

We have noted the rival submissions of the learned counsel appearing for the parties. In our view this is a private property which is recorded right from 1973. It is a gaothan area and the road supposed to be going through the gaothan area and since a portion of the said property is being covered, in our view the objection which is now sought to be raised is rather too belated. The SRA scheme has already been sanctioned way back in 2004 and one of the four buildings has already come up. No interference is called for. Petition is dismissed.

ACTING CHIEF JUSTICE

V.M.KANADE, J.